IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4762 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PRAHLADBHAI RATILAL

Appearance:

MR MITUL K SHELAT for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/08/2001

ORAL JUDGEMENT

Rule. Mr.Kishor Paul, learned advocate waives service of the rule.

2. Gujarat State Road Transport Corporation (hereinafter referred to as "Corporation") has filed the present petition for quashing and setting aside the judgement and award dated 8.11.2000 passed by the Labour

Court, Rajkot, whereby the order of dismissal was quashed and the respondent workman was ordered to be reinstated with continuity of service with 50% back wages. The case of the petitioner Corporation is that the respondent workman who was serving as a Conductor had not issued tickets to a group of 24 passengers travelling from Jasdan to Lilapur. Further that the respondent workman had also received amount from other two passengers travelling from Jasdan to Vichhiya, also had not issued tickets. This was found when the bus was checked by the Central Squad at 'Lilapur Stop' on 12.12.1989. On 3.1.1990, the respondent was issued charge sheet. A departmental inquiry was conducted against the workman. After issuing second show cause notice, the respondent was dismissed from service vide order dated 30.3.1990.

3. The respondent raised an industrial dispute which was referred to the Labour Court, Rajkot for adjudication. The Labour court by the impugned award, after discussing the case of the respondent, in para 7 of the award, wherein it is recorded that the workman had admitted that he has not issued tickets to 26 passengers, the learned Judge proceeded to examine the question as to 'whether the workman had collected fare from those 26 passengers'. The learned Judge has recorded in the same para that the workman in his statement on the spot has stated that, 'he could not issue ticket to 24 passengers'; that, 'they had paid amount, but he could not issue tickets'. The learned Judge has then recorded that in the statement which was recorded on the spot it was stated by the workman that, 'he was not well' and that, 'the passengers were taking families with them and therefore he could not issue tickets'. The learned Judge has then appreciated the statements of some of the passengers which were also recorded on the spot and found that the passengers have stated in their statement that, 'they had paid amount to the conductor and that till the place of checking, tickets were not issued'. The learned Judge then proceeded further and appreciated the evidence and found that from amongst these passengers some of the passengers are examined before the Inquiry Officer, of whom Mr.Pravinchandra has stated that he was in hurry to go; therefore, he has signed on a blank paper. Said witness, Mr. Pravinchandra has deposed in his deposition before the Inquiry Officer that, 'the respondent workman was busy in doing road booking and as he was sitting in the rare part of the bus, the latter could not reach to him. Similarly, another witness, one Mr.J.J. Ram Kashiram has also deposed in his deposition before the Inquiry Officer that, 'at the time of checking, the amount was in his hand and he did not pay the same to the

respondent conductor' and that, 'he had not given any statement on the spot' and that, 'he had signed the statement without reading the same'. He has also deposed that, 'when the bus was checked a little away from Jasdan, the respondent conductor's booking was in progress'.

4. The learned Judge also appreciated the evidence of the respondent conductor before the Inquiry Officer. The respondent conductor has stated before the Inquiry Officer that he had not collected the fare from any of the passengers. This fact is not challenged in the departmental inquiry. It is also deposed by the respondent workman that it was the first day of the respondent workman on that route and that he was not well. The learned Judge at the end of the appreciation of the evidence has recorded a categorical finding to the effect that, 'it is proved that the respondent workman did not issue tickets to 26 passengers'. But thereafter it is qualified by adding that, "but it is not proved that he did not issue tickets without any reasonable cause". The learned Judge then proceeded further to dilute the aforesaid finding by saying that at the time of checking there were, in all, 83 passengers in the bus, of whom 33 passengers had boarded the bus from the first stop of Jasdan and the respondent conductor issued tickets to them in advance and had also got his accounts closed. But at the second stop of Jasdan, about 50 passengers boarded the bus. Therefore, he could not issue tickets to 24 passengers out of them. That while he was issuing tickets to the passengers, the bus was checked and at that time he had not collected fare from those passengers. The learned Judge then drew a conclusion that non issuance of tickets to 26 passengers is not without any just and proper reason and therefore, no misconduct under Rule 7A and 12B of the Discipline and Appeal Rules is proved against the respondent workman. The learned Judge also recorded that the Inquiry Officer has come to the conclusion that the witnesses have given different version in their deposition than their statement on the spot, meaning thereby that these witnesses are got up witnesses by the respondent workman and therefore, the deposition of the witnesses is not acceptable.

5. The learned advocate Mr.Shelat appearing for the petitioner corporation submitted that the learned Judge has committed an error while considering the case under the provisions of sec.11A of the Act. He further submitted that the learned Judge also erred in appreciating the judgement of this Court in the case of

Gafar A. Gundigara v. Gujarat State Road Transport Corporation, reported in 2000(1) LLJ 695. Mr.Shelat, learned advocate submitted that the learned Judge erred in observing that the judgement referred to is regarding "number of cases of misappropriation", therefore, it cannot be applied to the facts of the present case. Mr.Shelat, learned advocate emphasised that the learned Judge has committed a grave error when he has recorded that, "on perusal of the default card of the respondent workman, there is not a single misconduct of misappropriation". Mr.Shelat, learned advocate submitted that the default card was produced before the learned Judge and it was perused by the learned Judge and the aforesaid finding is recorded after perusal of the default card. The default card is produced before this Court. In all, 13 instances are recorded in this card, of which incident recorded at serial no.2 is, Case No.317 of 1976, in Column 3, it is recorded that, 'on 29th June 1976 in a bus enroute from Jamnagar to Ahmedabad, 10 passengers travelling from Rajkot to Chotila were found of whom fare was collected (ticket not issued) and in respect of one passenger from Rajkot to Chotila, ticket was not issued and fare was also not collected and in respect of one passenger from Rajkot to Bamanbore though fare was collected, the ticket was not issued. In Column 5 of the default card it was mentioned that the respondent was imposed punishment of reduction to the initial pay scale of the Conductor, by order dated 23.9.1977. There is another incident which is recorded at serial no.3 which bears Case No.360 of 14, wherein in a bus from Somnath to Jamnagar on 29.6.1977 fare of eleven and half passengers was not collected. For that by order dated 5.3.1978, punishment of dismissal was imposed. Another case was also recorded at serial no.6 being Case No.17/ 17 wherein on 24.12.1986 on city route from Kananpara to Union Bank, one passenger was found to be fare not collected. Similarly, the incident at serial no.7, Case No.124/1, relates to 3.6.1986 wherein in city bus of Rajkot City, enroute from Jubilee to Headquarters, one passenger found, fare not collected. Similarly at serial nos.8, 9, 10 and 11, there are instances wherein number of cases of fare not collected are recorded. The case which is recorded at serial no.12 of the default card bearing no.61/ 1 wherein on 5.7.1989 on route from Jamnagar to Somnath, three passengers going from Junagadh to Veraval, respondent had issued three tickets of Rs.10/-, denomination which were used earlier, were reissued. Therefore, by an order dated 16.12.1988, the respondent was reduced to the initial stage of pay scale of the Conductor. Then at serial no.13, the present case is recorded. Thus, it is clear from perusal of the

default card that the finding recorded by the learned Judge of the Labour Court that, "not a single incident of misappropriation is recorded in the default card" and hence the judgement of this Court in the matter of Gafar A. Gundigara v. Gujarat State Road Transport Corporation, reported in 2000 (1) LLJ 695 will not be applicable to the facts of the present case is erroneous. Mr.Shelat, learned advocate for the petitioner Corporation submitted that the judgement of the Apex Court in the matter of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd) v. Secretary, Sahakari Noukarara Sangh, reported in AIR 2000 SC 3129, wherein the Honourable Apex Court has held that, "in the matters of misappropriation showing sympathy is a matter of misplaced sympathy and therefore, the award and order of the Labour Court is required to be interfered with by this Court." The Apex Court held that, "when the charges of breach of trust and misappropriation of funds entrusted to the workman are established, reinstating the workman in service is unjustified". The Apex court observed that, 'once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employees in service and that past record of the employee is unblemished is irrelevant'.

In the present case as is discussed hereinabove the default card of the present respondent shows number of instances of misappropriation. Not only that, two of them visited the respondent workman with punishment of placing the respondent workman at the initial stage of pay scale of Conductor.

6. Mr.Shelat, learned advocate further relied upon a judgement in the case of Karnataka State Road Transport Corporation v. B.S. Hullikatti, reported in AIR 2001 SC 930, wherein the Honourable Apex Court held that, 'retention of Bus conductor in service bound to result in financial loss to Road Transport Corporation'. It was also held that, 'the order passed by the Labour setting aside dismissal and directing reinstatement is not proper'. However, as the Bus conductor had superannuated during pendency of proceedings, the Apex Court had not disturbed the order of reinstatement, but back wages were refused. The Apex Court had held that the workman will be entitled to retirement benefits.

7. Learned advocate also relied upon yet another judgement of the Honourable Apex court in the matter between State Bank of India v. Tarun Kumar Banerjee and others, reported in AIR 2000 SC 3028. The Apex Court

held that, 'interference with the financial misconduct as recorded in the domestic inquiry wherein the Bank Cashier had received excess money from a customer and retained it with an intent to misappropriate, wherein the Court below had set aside the finding of misconduct on the ground of non examination of customer and non production of money and non production of confessional statement, was held to be improper'.

8. Mr.K.M. Paul, learned advocate appearing for the respondent workman submitted that the Labour court having exercised discretion under sec.11A and having ordered reinstatement with 50% back wages and having imposed punishment of stoppage of three increments without future effect, it is more than sufficient; and therefore, no interference is called for with the judgement and order of the learned Judge of Labour Court, Rajkot. Mr.Paul also submitted that penalty of 'economic death not only punishes the respondent workman but also the family members of the workman, which is not warranted. Mr.Paul submitted that he is ready to forego the back wages awarded and further the punishment of 'stoppage of three increments without future effect may be enhanced by making it 'stoppage of three increments with future effect'. Mr.Paul submitted that it will take care of the situation.

9. This Court is of the opinion that imposing punishment of economic death, is no doubt 'harsh' on the family members of the workman, but at the same time, the fact, of which the Court cannot be unmindful is that the respondent workman is having chequered history and he had to his credit number of cases of misappropriation in the past. Had it been the first instance of misappropriation, the Court could have upheld the award in favour of the respondent workman with proposed modification of the punishment as suggested by the learned advocate for the workman taking a lenient view. In the present case it is not possible to do so looking to his chequered history. Mr.Paul as a last resort submitted that only with a view to see that his service of more than 16 years is not wiped off by the present dismissal, the respondent may be permitted to take 'voluntary retirement' so that at least he can get some retiral benefits. Mr.Paul submitted that even the Apex Court in the matter of Karnataka State Road Transport Corporation (supra) has not disturbed the order of reinstatement and maintained the same on the ground that the Conductor has reached the age of superannuation. On the same analogy, Mr.Paul submitted that in the present case if the respondent is allowed to walk out of service

by taking voluntary retirement, that would be in fitness of things.

10. The workman once takes the voluntary retirement, he will be out of job and will not be able to indulge in similar misconduct and will not be able to cause any financial loss to the petitioner corporation. In that view of the matter, though the judgement and award of the Labour Court is quashed and set aside, the petitioner corporation is directed to consider the request of the respondent workman, 'granting him voluntary retirement'. The respondent workman may submit his application for voluntary retirement within 10 (ten) days from the date of receipt of this judgement, which the Corporation shall consider and decide within 10 (ten) weeks from the receipt of such application.

11. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No order as to costs.

(Ravi R. Tripathi, J.)

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